

RESOLUTION NO. 2192

NOW, THEREFOR, BE IT RESOLVED by the Mayor and Members of the City Council of the City of Albany, Oregon, that it enter into an agreement with Timberland/McCullough for the engineering services for 34th Avenue Industrial Park,

BE IT FURTHER RESOLVED that Timberland/McCullough will be responsible for the design of the required streets, sanitary sewer, storm sewer, water, power, telephone and sidewalk to City standards and that such designs will be reviewed by the City prior to construction, and

BE IT FURTHER RESOLVED that the City shall retain its right to inspect and approve such installations as above mentioned.

DATED this 13th day of August, 1980.

Richard S. Alsen
Mayor

ATTEST:

Gary R. Howers
Deputy City Recorder

CONTRACT

THIS AGREEMENT is made between the City of Albany, a municipal corporation, hereinafter referred to as the "CITY" and Estate Builders, Inc., the owners of property intended to be benefited by a public improvement, hereinafter called "OWNERS", Estate Builders, Inc., the developer of said property, hereinafter referred to as "DEVELOPER", and Timberland-McCullough, Inc., the engineer to be employed by the aforesaid DEVELOPER to perform engineering of public improvements, hereinafter called the "ENGINEER".

In consideration of the mutual covenants contained herein, it is agreed as follows:

1. The property which is owned by the OWNERS and which is intended to be benefited by the construction of a public improvement is described as follows: Tax Lots 103 and 104 of assessor's parcel map 11.3W.18

2. The DEVELOPER is the authorized agent of the OWNERS and the OWNERS hereby acknowledge that said agent is authorized to act in their behalf in all dealings with the CITY and they agree

to be bound by the acts of said agent.

3. The ENGINEER hereby certifies that he is a civil engineer licensed by the State of Oregon to design improvements of the type hereinafter set forth.

4. The improvements to be constructed are as follows:

Sanitary Sewer
Storm Sewer
Curbs
Gutters
Streets
Sidewalks

5. The ENGINEER is authorized by this agreement to design and supervise the installation of the public improvements set forth in paragraph No. 4 above.

6. Within ten days of the execution of this agreement the CITY shall provide the ENGINEER with specifications for the construction of the public improvements set forth in paragraph 4 above. To the extent that the CITY does not have existing specifications available for any aspect of the design or construction of said improvement, the CITY may supplement said specifications by referring the ENGINEER to a specific public improvement already existing within the City of Albany which improvement shall constitute a model for the construction of the public improvement in question. To the extent that the written specifications and model conflict, the written specifications shall control.

7. Upon completion of the plans by the ENGINEER, he shall submit the same to the City Engineer of the CITY. Within fifteen (15) working days of receipt of said plans, the City Engineer shall notify the ENGINEER in writing of the acceptance or rejection of the plans by the CITY. Acceptance by the City Engineer may include revisions or modifications to the plans which shall become conditions to approval.

8. Prior to commencing work on the public improvement set forth above, the ENGINEER shall prepare and submit to the City Engineer of the CITY the following documents:

a) Three sets of plans to be used in the completion of the aforesaid public improvement. Said plans must be of sufficient detail that compliance with the standards set by the CITY, both through the written specifications and through the model, can be ascertained by reference to the plans alone. Said plans shall include appropriate cross-sections, specifications, and design calculations.

b) All necessary construction easements and/or permanent easements in the form prepared and provided by the CITY and the easement shall be in the name of the CITY.

c) All necessary administrative approvals and permits, but not limited to, permits from the Department of Environmental Quality, building permits, grading and filling permits, etc.

9. Upon receipt of written approval of the plans, construction of the public improvement may be commenced. Said

construction of the public improvement may be commenced. Said improvement must be completed in accordance with the plans within two (2) years from the date that said approval is granted by the City Engineer for the CITY. Upon the expiration of two (2) years, the approval shall be null and void.

10. No revisions, modifications or alterations may be made in the plan without the prior written approval of the City Engineer of the CITY.

11. The CITY will be responsible for the inspection of the construction of said public improvements to determine compliance with the approved plans. Should the CITY determine that construction is not proceeding in accordance with the approved plans, the CITY shall have the authority to suspend construction by a written notice to the DEVELOPER setting forth the defects.

12. In addition to the power to suspend construction, if at the completion of construction it is determined that the public improvement was not constructed in accordance with the approved plans, the CITY shall give written notice thereof to the DEVELOPER and shall specify the defects.

13. In the event that the DEVELOPER is notified of a defect in accordance with paragraphs 11 or 12 above, and in the event that said defect is not corrected within ten (10) days of said notice, or such other time as may be agreed to, in writing, between the CITY and the DEVELOPER, the CITY may, at its option, correct said deficiency itself or contract with others to secure the correction of said deficiency and the OWNERS and DEVELOPER,

jointly and severally, obligate themselves to pay to the CITY any and all costs incurred in the correction of said deficiency. If the deficiency is not corrected, the CITY will not be obligated to accept the public improvement or to be responsible for the maintenance and upkeep thereof.

14. Upon the CITY's approval of the construction plans as set forth above, and prior to the commencement of construction, the DEVELOPER shall pay all appropriate fees which may be due the CITY or any other governing body or administrative agency. The fees due the CITY shall include, but are not limited to the following:

a) Plan review and construction inspection fees in the amount of four percent (4%) of the total construction costs plus eighty cents (\$.80) per foot for internal television inspection of all gravity sanitary sewer lines larger than six inches (6").

b) The cost of street signs and street sign posts at the following rates:

1. Street sign post.....\$80.00
2. 30" stop signs.....\$45.00
3. Speed signs and lane control signs.....\$45.00
4. Street names signs.....\$40.00

15. Prior to commencing construction, the ENGINEER shall provide the CITY with a detailed tabulation of all construction costs which shall include copies of all sub-contracts and which shall contain a total construction cost projection based upon said sub-contracts. This tabulation shall constitute

the basis for computing the CITY's fee for plan review and construction inspection.

16. Prior to commencing construction, the DEVELOPER shall provide the CITY with a list of all contractors and sub-contractors who will be employed in the construction of the improvement and will provide written proof of each contractor or sub-contractor's compliance with the worker's compensation laws of the State of Oregon and will further provide proof that each of said contractors or sub-contractors maintains, in full force and effect, public liability and property damage insurance in the amounts required by the CITY's specifications, and that the CITY is named as a co-insured upon all such policies.

17. The developer agrees that prior to the commencement of construction it will cause the contractor or contractors performing the work to post a bond with the city, payable to the city, developer and owner, by a recognized bonding company authorized to do business in the State of Oregon, in an amount not less than the total construction cost projection referred to in paragraph 15 above. Said bond shall guarantee compliance by the contractor with all the specifications provided for in this agreement.

18. The OWNERS and DEVELOPER jointly and severally agree to indemnify and hold harmless the CITY for all damages and claims which may arise in any manner as a result of the construction of the public improvement in question.

19. The CITY shall accept the public improvement in question only upon determination that said improvement has been constructed in accordance with approved plans, and that all

construction claims and bills have been paid in full and that no liens shall be pending upon said improvement.

20. Any notices required to be sent or delivered pursuant to this Agreement shall be deemed received three (3) days after being mailed at any United States post office. All notices which need be sent to the OWNERS, DEVELOPER, or ENGINEER, shall be sent to the DEVELOPER at the following address:

Estate Builders, Inc. Timberland-McCullough, Inc.
777 N. E. Second Street P.O. Box 668
Corvallis, OR 97330 Albany, OR 97321

All notices to be sent to the CITY shall be sent to the following address: City of Albany
P. O. Box 490
Albany, OR 97321

21. No public improvement shall be made by the OWNERS, DEVELOPER, or ENGINEER, without prior compliance with the terms of this Agreement.

OWNERS:

Int, Lutz, Boser, Swanson & Gule
[Signature]

James H. Jordan

DEVELOPER:

Estate Builders, Inc.
[Signature]

BY:

JAMES H. JORDAN, Secretary

ENGINEER:

Timberland-McCullough

Kenneth M. Wightman
[Signature]

CITY:

CITY OF ALBANY, OREGON

DATED: November 7, 1980

Richard S. Olsen
[Signature]
Richard S. Olsen, Mayor

GUARANTY AGREEMENT
and
ASSIGNMENT OF RIGHTS UNDER BOND

Re: 34th Avenue Industrial Park
Albany, Oregon 97321

City of Albany Project No. ST-80-5 and SS-80-3

ESTATE BUILDERS, INC., developer, and JAMES H. JORDAN and JERALD E. FOX, principals of Estate Builders, Inc., individually, hereby unconditionally guarantee performance of all work and compliance with all requirements of the City of Albany relating to the 34th Avenue Industrial Park project.

Each party agrees to indemnify and hold harmless the City of Albany for any loss or liability in relation to that project, including costs of attorneys fees, and guarantees performance and warrants materials and workmanship of that job in accord with the City's specifications.

Estate Builders, Inc. hereby assigns to the City of Albany all of its rights under the bond from Wildish Construction Co., Inc. to Estate Builders, Inc. in relation to the foregoing job (copy attached) and consents to any and all action by the City of Albany to enforce the terms of the bond.

The foregoing guaranties and assignment are given in consideration of the acceptance of the City of Albany of the foregoing agreement in satisfaction of the bonding requirements specified under paragraph 17 of the Contract between the City of Albany and Estate Builders, Inc. dated November 7, 1980 relating to the above project.

Dated this 5th day of November, 1980.

ESTATE BUILDERS, INC.

By:

James H. Jordan, Secretary

Jerald E. Fox, Individually

James H. Jordan, Individually

Labor and Material Payment Bond
Private Work - General



Bond No.
Premium included in
Performance Bond

KNOW ALL MEN BY THESE PRESENTS:

That WILDISH CORVALLIS CONSTRUCTION CO.
as Principal, hereinafter called Principal, and INDUSTRIAL INDEMNITY COMPANY, incorporated under the laws
of the State of California, as Surety, hereinafter called Surety, are held and firmly bound unto
ESTATE BUILDERS, INC., as Obligees,
hereinafter called Owner, in the amount of TWO HUNDRED THIRTY-THREE THOUSAND AND 00/100
Dollars
(\$ 233,000.00), for the payment whereof Principal and Surety bind themselves, their heirs, executors,
administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, Principal has by written agreement dated November 5, 1980 entered into a contract
with Owner for SEWER AND STREET - 34th AVENUE INDUSTRIAL PARK

in accordance with drawings and specifications prepared by
which contract is by reference made a part hereof, and a copy thereof is or may be attached hereto.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That, if the Principal shall pay, or
cause to be paid in full, the claims of all persons performing labor upon or furnishing materials to be used in, or
furnishing appliances, teams or power contributing to such work, then this obligation shall be void; otherwise it
shall remain in full force and effect.

Any notice to the Surety may be addressed to or served upon it at its office at 255 California Street, San Fran-
cisco, California.

No suit, action or proceeding to recover on this bond shall be sustained unless the same to be commenced
within six (6) months from the completion of said structure or work of improvement.

Signed and sealed this 5th day of NOVEMBER, 19 80

WILDISH CORVALLIS CONSTRUCTION CO.

Principal

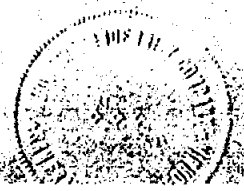
William D. Hendrix Mgr.

INDUSTRIAL INDEMNITY COMPANY

By

Ronald Jolma
Ronald Jolma

Attorney -in-fact



Power of Attorney #740



HOME OFFICE - SAN FRANCISCO

Know all men by these presents:

That INDUSTRIAL INDEMNITY COMPANY, a corporation organized and existing under the laws of the State of California, and having its principal office in the City of San Francisco, State of California, does hereby make, constitute and appoint

RONALD JOIMA

its true and lawful attorney-in-fact for it and in its name, place and stead to execute on its behalf as surety, bonds, undertakings, stipulations, consents and all contracts of suretyship and to attach its corporate seal to such obligations in favor of all obligees, provided that the liability of the Company as surety under his authority in no one instance shall exceed the sum of

UNLIMITED

and reserving to itself full power of substitution and revocation.

This Power of Attorney is made and executed in accordance with the Resolution adopted by the Board of Directors of INDUSTRIAL INDEMNITY COMPANY at a meeting held on the 27th day of September, 1972, reading as follows:

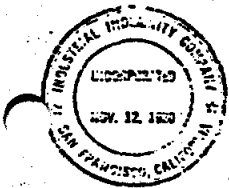
"RESOLVED, that the Chairman of the Board or President or Executive Vice President or Senior Vice President of the Company, in conjunction with the Secretary or an Assistant Secretary of this Company, be and he hereby is authorized to execute, acknowledge or verify Powers of Attorney qualifying selected attorneys-in-fact to act under such Powers of Attorney to execute on behalf of Industrial Indemnity Company bonds, undertakings, stipulations, consents and all contracts of suretyship, and to attach the corporate seal thereto;

"RESOLVED, FURTHER, that the signatures of said officers so authorized by this Company may be printed facsimile, lithographed or otherwise produced, and that the facsimile signature of any person who shall have been such officer of this Company at the time of such execution, acknowledgment or verification may continue to be used for the purpose hereinabove stated and will be binding on this Company, notwithstanding the fact that he may have ceased to be such officer at the time when such instruments shall be issued."

In witness whereof, INDUSTRIAL INDEMNITY COMPANY has caused these presents to be signed and its corporate seal to be affixed by its proper officers, at the City of San Francisco, California, this 19th day of January, 1979.

Attest:

INDUSTRIAL INDEMNITY COMPANY



[Signature of L. E. Mulryan]

L. E. Mulryan

Secretary

[Signature of J. G. LaPlante]

By

J. G. LaPlante
(Senior Vice President)

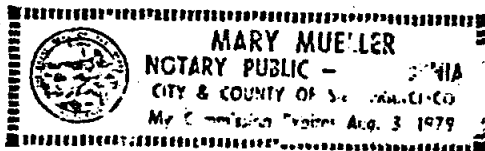
STATE OF CALIFORNIA }
CITY AND COUNTY OF SAN FRANCISCO } ss.

On this 19th day of January, 1979, before me, Mary Mueller, a notary public in and for the City and County of San Francisco, State of California, personally appeared

J. G. LaPlante and L. E. Mulryan

known to me to be the Senior Vice President and Secretary of the corporation which executed the within instrument, and acknowledged to me that such corporation executed the same, and that the resolution referred to in the preceding instrument is a true and correct copy of the resolution duly passed at a meeting of the Board of Directors on September 27, 1972, and that the same is in full force and effect.

In witness whereof, I have hereto set my hand and affixed my official seal the day and year in this certificate first above written.



[Signature of Mary Mueller]
Notary Public in and for the City and County of San Francisco, State of California

I, L. E. Mulryan, (Secretary) of INDUSTRIAL INDEMNITY COMPANY, do hereby certify that I have compared the Power of Attorney granted herein and the Resolution recited herein with the originals now on file in the principal office of said Company, and that the same are correct transcripts therefrom and of the whole of the said originals, and that said Power of Attorney has not been revoked but is still in full force and effect.

In witness whereof, I have hereunto subscribed my name as such officer and affixed the seal of INDUSTRIAL INDEMNITY COMPANY at the City of San Francisco, California, this 5th day of NOVEMBER, 1980

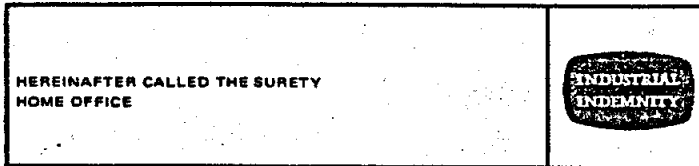
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[Signature of L. E. Mulryan]

L. E. Mulryan,

Secretary

Performance Bond
Private Work - General



Bond No.
Premium \$

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That We, **WILDISH CORVALLIS CONSTRUCTION CO.**

of **Corvallis, Oregon**

(hereinafter called the Principal), as Principal, and **INDUSTRIAL INDEMNITY CO.**

(hereinafter called the Surety), as Surety, are held and firmly bound unto

ESTATE BUILDERS, INC.

of **Corvallis, Oregon**

(hereinafter called the Oblige), in the sum of **TWO HUNDRED THIRTY-THREE THOUSAND AND 00/100**

Dollars (\$ **233,000.00**)

for the payment whereof said Principal and Surety bind themselves firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT

Whereas, the Principal has entered into a written contract dated **November 5, 1980**

with the Oblige, for **SEWER & STREET - 34th AVENUE INDUSTRIAL PARK**

a copy of which is hereto annexed:

Now, Therefore, if the Principal shall faithfully perform the work contracted to be performed under said contract, then this obligation shall be void; otherwise to remain in full force and effect.

SUBJECT, HOWEVER, TO THE FOLLOWING CONDITIONS:

First: That in the event of any default on the part of the Principal, written notice thereof shall be given to the Surety as promptly as possible, and in any event within ten (10) days after such default shall have become known to the Oblige or to any representative of the Oblige authorized to supervise the performance of said contract. Said notice to the Surety shall be addressed to it by registered United States mail, or served upon it at its office at 255 California Street, San Francisco, California. If the Principal shall abandon said contract, or be compelled by the Oblige to cease operations thereunder, the Surety shall have the right to proceed or procure others to proceed with the performance of such contract, and all reserves, deferred payments, and other moneys provided by said contract to be paid to the Principal, shall be paid to the Surety, at the same times and under the same conditions as by the terms of said contract such moneys would have been paid to the Principal had the contract been performed by the Principal, and the Surety shall be entitled thereto in preference to any assignee of the Principal, or any adverse claimant; but if the Oblige shall complete or re-let the said contract, all reserves, deferred payments, or other moneys remaining after payment for such completion shall be paid to the Surety in order to indemnify it against any loss it may suffer or sustain by reason of the execution of this bond or any other bond in connection with said contract, or shall be applied as the Surety may direct toward the settlement of any obligations or liability incurred hereunder or under any bond or obligation incurred by it in connection with said contract.

Second: That the Oblige shall faithfully perform all of the terms, covenants and conditions of said contract on the part of the Oblige contracted to be performed; and shall also retain the last payment and all reserves or deferred payments until the complete performance of said contract, and until the expiration of the time within which notices of claim or claims of lien by persons performing work or furnishing materials under said contract may be filed, and until all such claims have been paid, unless the Surety shall consent, in writing, to the payment of said last payment, reserves, or deferred payments.

Third: That the Surety shall not be liable for any damages resulting from strikes or labor difficulties, or from mobs, riots, civil commotion, public enemy, fire, the elements, acts of God, or defect or fault in the plans or specifications referred to in said contract, or for repair, or reconstruction of any work or materials damaged or destroyed by any of said causes, or for damages or injury to, or for the death of any person; or under or by virtue of any statutory provision for damages or compensation for injury to or the death of any employee. This bond does not cover any provision of the contract, or specifications respecting guarantees of efficiency, or wearing qualities; or for maintenance or repairs, nor does it obligate the Surety to furnish any bond, policy or obligation other than this instrument.

Fourth: That no suit, action, or proceeding by the Oblige to recover on this bond shall be sustained unless the same be commenced within six months from the completion of said structure or work of improvement, nor shall recovery be had for damages accruing after that date; that service or writ or process commencing any such suit or action shall be made on or before that date; that the Principal shall be made a party to any such suit or action and be served with process commencing the same, if the Principal can with reasonable diligence be found.

SIGNED, SEALED AND DATED, this **5th** day of **NOVEMBER**, 19 **80**

WILDISH CORVALLIS CONSTRUCTION CO.

Principal

Timothy D. Hudis

(Seal)

By **RONALD JOLMA**

Attorney-in-Fact

Power of Attorney #740



HOME OFFICE - SAN FRANCISCO

Know all men by these presents:

That INDUSTRIAL INDEMNITY COMPANY, a corporation organized and existing under the laws of the State of California, and having its principal office in the City of San Francisco, State of California, does hereby make, constitute and appoint

----- RONALD JOIMA -----
its true and lawful attorney-in-fact for it and in its name, place and stead to execute on its behalf as surety, bonds, undertakings, stipulations, consents and all contracts of suretyship and to attach its corporate seal to such obligations in favor of all obligees, provided that the liability of the Company as surety under his authority in no one instance shall exceed the sum of

----- UNLIMITED -----
and reserving to itself full power of substitution and revocation.

This Power of Attorney is made and executed in accordance with the Resolution adopted by the Board of Directors of INDUSTRIAL INDEMNITY COMPANY at a meeting held on the 27th day of September, 1972, reading as follows:

"RESOLVED, that the Chairman of the Board or President or Executive Vice President or Senior Vice President of the Company, in conjunction with the Secretary or an Assistant Secretary of this Company, be and he hereby is authorized to execute, acknowledge or verify Powers of Attorney qualifying selected attorneys-in-fact to act under such Powers of Attorney to execute on behalf of Industrial Indemnity Company bonds, undertakings, stipulations, consents and all contracts of suretyship, and to attach the corporate seal thereto;

"RESOLVED, FURTHER, that the signatures of said officers so authorized by this Company may be printed facsimile, lithographed or otherwise produced, and that the facsimile signature of any person who shall have been such officer of this Company at the time of such execution, acknowledgment or verification may continue to be used for the purpose hereinabove stated and will be binding on this Company, notwithstanding the fact that he may have ceased to be such officer at the time when such instruments shall be issued."

In witness whereof, INDUSTRIAL INDEMNITY COMPANY has caused these presents to be signed and its corporate seal to be affixed by its proper officers, at the City of San Francisco, California, this 19th day of January, 1979.

Attest:



L. E. Mulryan

L. E. Mulryan Secretary

INDUSTRIAL INDEMNITY COMPANY

By *J. G. LaPlante*

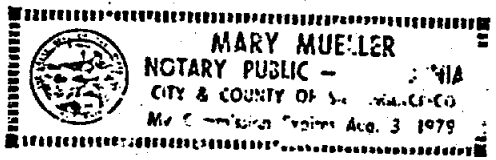
J. G. LaPlante
(Senior Vice President)

STATE OF CALIFORNIA }
CITY AND COUNTY OF SAN FRANCISCO } ss.

On this 19th day of January, 1979, before me, Mary Mueller a notary public in and for the City and County of San Francisco, State of California, personally appeared J. G. LaPlante and L. E. Mulryan

known to me to be the Senior Vice President and Secretary of the corporation which executed the within instrument, and acknowledged to me that such corporation executed the same, and that the resolution referred to in the preceding instrument is a true and correct copy of the resolution duly passed at a meeting of the Board of Directors on September 27, 1972, and that the same is in full force and effect.

In witness whereof, I have hereto set my hand and affixed my official seal the day and year in this certificate first above written.



Mary Mueller

Notary Public in and for the City and County of San Francisco, State of California

I, L. E. Mulryan, (Secretary) of INDUSTRIAL INDEMNITY COMPANY, do hereby certify that I have compared the Power of Attorney granted herein and the Resolution recited herein with the originals now on file in the principal office of said Company, and that the same are correct transcripts therefrom and of the whole of the said originals, and that said Power of Attorney has not been revoked but is still in full force and effect.

In witness whereof, I have hereunto subscribed my name as such officer and affixed the seal of INDUSTRIAL INDEMNITY COMPANY at the City of San Francisco, California, this 5th day of NOVEMBER, 1980

L. E. Mulryan

L. E. Mulryan, Secretary